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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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MICHAEL D. GREGG,

Plaintiff,

vs.

CITYWIDE HOME LOANS, AND GMAC  
MORTGAGE (GMAC),

Defendants.

**MOTION TO DISMISS COMPLAINT**

Case No. 2:11-cv-00342-PMW

Judge Paul M. Warner

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Defendant GMAC Mortgage, LLC("GMAC") hereby respectfully requests that the Court dismiss the Complaint against GMAC pursuant to Fed. R. Civ. P. 8 and 12(b)(6). Plaintiff has asserted six causes of action. Four are based on the incorrect premise that Plaintiff has rescinded his home loan under the Truth in Lending Act. However, his time to rescind expired over two years before he attempted to rescind and, just as importantly, he has failed to properly plead that he could rescind.

The other two causes of action are a claim under the Real Estate Settlement and Procedures Act ("RESPA") and a negligence claim. The RESPA claim fails because Plaintiff has alleged facts showing that GMAC complied with

RESPA. The negligence claim fails because GMAC owed no duty to the Plaintiff on which a negligence claim could be based.

The reasons that the Court should dismiss the Complaint are set forth in detail in the supporting memorandum submitted herewith.

DATED THIS 23<sup>rd</sup> DAY OF MAY, 2011

/s/ Robert H. Scott  
Robert H. Scott  
*Counsel for Defendant GMAC Mortgage, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that I filed the foregoing through the Court's ECF/electronic filing system on May 23, 2011, which sent notice of the filing by email to:

Matt Wadsworth  
Brian E. Arnold  
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SOUTH OGDEN, UT 84403

/s/ Robert H. Scott